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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re ALISSA L., a Person Coming Under
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

DESIREE L.,

Defendant and Appellant.

D053881

(Super. Ct. No. J513382B)

APPEAL from a judgment of the Superior Court of San Diego County, Laura J.
Birkmeyer, Judge. Affirmed.

Desiree L. appeals a judgment terminating her parental rights to her minor
daughter, Alissa L., under Welfare and Institutions Code section 366.26.¹ Desiree argues
the court lacked sufficient evidence to support its findings that the beneficial parent-child

¹ Statutory references are to the Welfare and Institutions Code.

relationship exception of section 366.26, subdivision (c)(1)(B)(i) did not apply to preclude termination of her parental rights. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In July 2006 the San Diego County Health and Human Services Agency (Agency) filed a petition on behalf of then 18-month-old Alissa under section 300, subdivisions (b) and (j). The petition alleged Desiree and Alissa's father, Ronald L., engaged in domestic violence. Ronald pulled Desiree's hair while Desiree sat in the front seat of a car. Ronald struck Desiree's head several times, and Desiree hit Ronald back. Alissa was in the car during the altercation.

According to the detention report, about one month after the incident alleged in the petition occurred, police officers took Alissa into protective custody. They found Alissa and her sister, D.J., in the care of an aunt who was under the influence of methamphetamines.² The police discovered drugs and drug paraphernalia in the home within Alissa's reach. Desiree denied knowing there were drugs in the home. Desiree admitted D.J. was removed from her care in 2000 because of drug abuse but claimed she had been drug free for years and was willing to drug test. The court held a detention hearing in August 2006, made a true finding on the petition and detained Alissa in out-of-home care. The court ordered supervised visits between Desiree and Alissa.

In the jurisdiction and disposition report, the social worker recommended that the court order Alissa's removal from Desiree's custody. Desiree minimized the seriousness

² D.J. is not a minor in this appeal.

of the domestic violence incident. In addition to exposing Alissa to domestic violence, Desiree had placed Alissa in close proximity to drugs and there were serious concerns Desiree was unable to provide Alissa with a safe home environment.

At a jurisdiction and disposition hearing, the court found it had jurisdiction, declared Alissa a dependent and ordered Alissa placed in out-of-home care. The court ordered Desiree to comply with provisions of her case plan, including general counseling, domestic violence treatment, sexual abuse education, a psychological evaluation and substance abuse testing.

During the next six months, Desiree participated in a psychological evaluation. The report stated the risk to Alissa of additional neglect remained quite high and was likely to remain high for the foreseeable future. Desiree denied abusing drugs, but she lived with relatives who used and dealt drugs.

Alissa had been placed in the care of her paternal grandmother. Desiree had not yet secured employment or stable housing. However, she regularly participated in a domestic violence program and frequently visited Alissa. The social worker reported the visits were appropriate and recommended that short, unsupervised visits be offered to Desiree. Desiree attended individual therapy sessions, and the therapist reported Desiree had made progress. The social worker had concerns that Desiree lacked stable housing and was likely living with individuals who abused drugs. The social worker continued to emphasize the need for Desiree to submit to drug tests.

At the six-month review hearing, the court continued reunification services and ordered that Alissa remain in the care of her relatives but allowed for short-term unsupervised visits between Alissa and Desiree.

During the next reporting period, Desiree had a lapse with her services. She no longer participated in individual therapy, and she continued to live with friends and family who had a history of substance abuse. Desiree did not show up to some of her scheduled visits with Alissa and generally, the frequency of the visits had decreased. In addition, the social worker expressed concerns about risks identified in Desiree's psychological evaluation.

The Court Appointed Special Advocate (CASA) submitted reports recommending services for Desiree be terminated and that Alissa remain with her relative caregivers. Desiree stopped attending therapy sessions for about three months. After recommencing therapy, Desiree missed two appointments and did not return her therapist's telephone calls. Alissa's caregiver notified the CASA that Desiree appeared to be under the influence of drugs during a visit with Alissa. The CASA reported random drug testing should be implemented to make sure Desiree was clean.

The trial court held an 18-month review hearing in May 2008. After reviewing the reports, the court terminated reunification services and scheduled a section 366.26 selection and implementation hearing.

In her section 366.26 assessment report, social worker Linda Johanesen recommended that adoption be implemented as the permanent plan for Alissa. Johanesen noted Alissa was in excellent health and developmentally on target. She believed Alissa

to be very adoptable, and Alissa's caregivers wanted to adopt her. The visits between Alissa and Desiree were appropriate, and Alissa generally enjoyed visiting Desiree. Desiree displayed affection toward Alissa and Johanesen acknowledged that the relationship between Alissa and Desiree was a loving and affectionate one. The two played well together and shared snacks. Johanesen reported at the end of these visits, Alissa willingly left with her caregiver. Johanesen believed that Desiree had been unable to meet Alissa's daily needs for a long time. The benefit of continued contact between Desiree and Alissa did not outweigh the benefit Alissa would receive from placement in a stable, loving and safe home.

In an addendum report, Johanesen stated Desiree had missed two visits with Alissa in about three months and since the last court review hearing, Desiree had not called or visited Alissa at her relative caregiver's home. Alissa's therapist submitted a report indicating Alissa's strongest emotional ties were with her caregivers. Alissa currently did not show anxiety or great distress when visits with Desiree ended. Further, when asked by Johanesen and her therapist who she wanted to live with, Alissa promptly named her current relative caregivers. Johanesen noted Alissa had been out of Desiree's care for more than two years, and Alissa no longer looked to Desiree to meet her needs.

The CASA reported Alissa should remain with her caregivers and that Alissa has expressed her desire to live with them. The CASA had concerns about returning Alissa to Desiree and noted Desiree did not submit to drug tests and did not find an apartment to live in until Alissa had been a dependent for 23 months. The CASA believed Alissa should be adopted by her caregivers.

After considering the evidence, the court found Alissa was likely to be adopted and none of the exceptions to section 366.26, subdivision (c)(1)(B)(i) applied. Desiree timely filed a notice of appeal.

DISCUSSION

Desiree challenges the sufficiency of the evidence to support the court's finding the beneficial parent-child relationship exception of section 366.26, subdivision (c)(1)(B)(i) did not apply to preclude terminating her parental rights. Desiree asserts she regularly visited Alissa and that terminating parental rights would sever the parental relationship she shares with Alissa.

A

We review the judgment for substantial evidence. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) If, on the entire record, there is substantial evidence to support the findings of the juvenile court, we uphold those findings. We do not consider the credibility of witnesses, attempt to resolve conflicts in the evidence or evaluate the weight of the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court's order, and affirm the order even if there is substantial evidence supporting a contrary finding. (*In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610.) The parent has the burden of showing there is no evidence of a sufficiently substantial nature to support the finding or order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

"Adoption, where possible, is the permanent plan preferred by the Legislature." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 573.) If the court finds a child cannot be

returned to his or her parent and is likely to be adopted if parental rights are terminated, it must select adoption as the permanent plan unless it finds termination of parental rights would be detrimental to the child under one of six specified exceptions. (§ 366.26, subd. (c)(1)(B)(i)-(vi); *In re Erik P.* (2002) 104 Cal.App.4th 395, 401.)

Section 366.26, subdivision (c)(1)(B)(i) provides an exception to the adoption preference if termination of parental rights would be detrimental to the child because "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." We have interpreted the phrase "benefit from continuing the relationship" to refer to a parent-child relationship that "promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent[-]child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent[-]child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575; accord *In re Zachary G.* (1999) 77 Cal.App.4th 799, 811.)

To meet the burden of proof for this statutory exception, the parent must show more than frequent and loving contact, an emotional bond with the child or pleasant visits. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827.) "Interaction between natural parent and child will always confer some incidental benefit to the child. . . . The

relationship arises from the day-to-day interaction, companionship and shared experiences." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Although day-to-day contact is not required, it is typical in a parent-child relationship. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 51.) The parent must show he or she occupies a parental role in the child's life, resulting in a positive and emotional attachment from child to parent. (*In re Autumn H.*, at p. 575; *In re Elizabeth M.* (1997) 52 Cal.App.4th 318, 324.)

B

The court found Desiree regularly visited Alissa. Thus, we examine only whether substantial evidence supports the court's finding Desiree did not show she had a beneficial relationship with Alissa. Admittedly, the evidence shows Desiree had a relationship with Alissa, but it was not shown to be a beneficial parent-child relationship within the meaning of section 366.26, subdivision (c)(1)(B)(i). During visits, Desiree played with Alissa, fed her snacks and showed affection toward Alissa. The social worker acknowledged that Alissa loves Desiree and that the two share a bond. However, Alissa's therapist, the CASA and the social worker did not believe Alissa would benefit more from maintaining a relationship with Desiree than Alissa would by being adopted. Alissa's therapist stated Alissa's closest emotional ties were with her caregivers and that Alissa had formed a parent-child bond with her caregivers. The CASA emphasized Alissa wanted to live with her caregivers and noted that the caregivers' home is the only home Alissa has known. Social worker Johanesen noted Alissa had been out of Desiree's custody for more than two years, and Alissa did not look to Desiree to meet her needs or ask for Desiree when they were apart. Alissa instead regarded her current caregivers as

her parents and relied on them for her daily emotional and physical needs. The court was entitled to find the social worker's expert opinion credible and give greater weight to her assessment and testimony than to the opinions of other service providers. We cannot reweigh the evidence or substitute our judgment for that of the trial court. (*In re Casey D.*, *supra*, 70 Cal.App.4th at p. 53.)

In addition, to establish the section 366.26, subdivision (c)(1)(B)(i) exception, Desiree needed to show Alissa would suffer detriment if their relationship was terminated. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) The evidence did not show terminating parental rights would likely cause Alissa great harm and deprive her of a substantial, positive emotional attachment. (*Ibid.*) The social worker observed several supervised visits between Alissa and Desiree. The majority of visits ended without incident and concluded with Alissa going willingly with her caregiver. Johanesen asked Alissa at the end of one visit if she wanted to live at Desiree's house. Alissa responded "No," shook her head and left willingly with the caregiver. There was no showing Alissa would be greatly harmed if Desiree's parental rights were terminated. Rather, both the social worker and CASA raised concerns Alissa would not have a stable or secure home with Desiree. Desiree had not been able to comply with her case plan to the point where she could reunify with Alissa. The record showed Desiree might be abusing drugs, she did not consistently participate in therapy, she continued to associate with persons affiliated with drugs and she failed to appear for random drug tests. Desiree's visits with Alissa had decreased to once a week and more recently, Desiree had not called or visited Alissa at the caregivers' home in between supervised visits. The visits continued to take

place in a controlled environment, and Desiree had made little progress before the section 366.26 hearing toward receiving overnight or lengthy, unsupervised visits. Even if Alissa were to feel some sense of loss if she no longer had contact with Desiree, to require a parent show only "some, rather than great, harm at this stage of the proceedings would defeat the purpose of dependency law" (*In re Brittany C.* (1999) 76 Cal.App.4th 847, 853.)

Desiree relies on *In re S.B.* (2008) 164 Cal.App.4th 289 (*S.B.*), a case from this court, to support her argument the trial court should have applied the beneficial parent-child relationship exception. In *S.B.*, we reversed the trial court's finding that the beneficial parent child relationship exception did not apply after concluding the minor would be greatly harmed by loss of the significant, positive relationship the minor shared with her father. The father complied with every aspect of his case plan, frequently visited the minor and was devoted to her. Further, the minor loved her father and wanted to live with him. (*Id.* at p. 294-295.) While factual comparisons between cases provide insight, these comparisons are not dispositive. The determination on appeal is whether there is substantial evidence to support the trial court's findings that the beneficial parent-child relationship exception did not apply. We conclude that on the facts of this case, the trial court had sufficient evidence to support its findings.

After balancing the strength and quality of the parent-child relationship against the security and sense of belonging that an adoptive placement would give Alissa after more than two years of dependency proceedings, the court found the preference for adoption

had not been overcome. Substantial evidence supports the court's finding the section 366.26, subdivision (c)(1)(B)(i) exception is inapplicable.

DISPOSITION³

The judgment is affirmed.

HALLER, Acting P. J.

WE CONCUR:

O'ROURKE, J.

IRION, J.

³ On March 12, 2009, the Administrative Presiding Justice sent a letter to counsel concerning a matter that occurred on March 11, 2009, immediately following oral argument. The panel deciding this case agreed to the disposition and resolution of this appeal before the incident described in the March 12th letter was brought to the court's attention.